

GUILDFORD BOROUGH COUNCIL

LICENSING ACT 2003 RECORD OF HEARING AND DECISION TAKEN BY THE LICENSING SUB-COMMITTEE	
DATE OF HEARING	Wednesday, 6 July 2016
SUB-COMMITTEE MEMBERS PRESENT:	Councillor Mike Parsons (Chairman) Councillor David Elms Councillor Mike Hurdle
OFFICERS PRESENT:	Mark Adams (Licensing Officer) Sophie Butcher (Committee Manager) Bridget Peplow (Senior Litigation Solicitor) Peter Rodham (Licensing Officer – observing) Mike Smith (Licensing Team Leader - observing) Geena-Mae Bucknall (Trainee Solicitor - observing)
RESPONSIBLE AUTHORITIES	Graham Barnett - Surrey Police Inspector Colin Whitear – Licensing Officer for Surrey Police Anjana Papnai – Environmental Control Officer Chris Woodhatch – Team Leader Food and Safety - in attendance on behalf of Ann Seviour-Harte – Occupational Health and Safety Officer
DISCLOSURES OF INTEREST BY MEMBERS PRESENT:	None
PREMISES:	Thirty3Hz, 16 Park Street, City Centre, Guildford, GU1 4XB
TYPE OF APPLICATION:	Application to vary premises licence GUPLA0184
DETAILS OF APPLICATION SOUGHT:	The application is seeking a variation to the existing licence. The variation seeks to add the licensable activities of provision of plays, provision of films, provision of performances of dance, provision of anything of a similar description to live music, recorded music or performances of dance and late night refreshment. The application also seeks to extend the hours for the sale of alcohol, live music and recorded music and the opening hours of the premises. The application also seeks changes to various conditions attached to the licence.
APPLICANT:	Mr Jonathan Outram

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OTHER PERSONS:	Mrs Caroline Neville (administrator for Thirty3Hz) Mr Neil Woodridge (fellow work colleague)

DETAILS OF DECISION TAKEN:

The Sub-Committee considered the application for a variation to premises licence GUPLA0184. The Sub-Committee also considered the relevant sections of the Council's Licensing Policy and the National Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003 (as amended).

The Licensing Officer reported that the application was to vary premises licence GUPLA0184 for Thirty3Hz. Since the application had been submitted, the applicant had withdrawn the provision of plays and films. The applicant also confirmed at the hearing that the provision of late night refreshment was also withdrawn as it was not their intention to sell hot food and drink after 11pm. The only additional licensable activities to be considered were the provision of performance of dance and the provision of anything of a similar description to live music, recorded music or performance of dance. The applicant had submitted a number of additional conditions and steps that he intended to take, in order to promote the four licensing objectives.

The Licensing Officer reported that three representations had been received from Surrey Police, Guildford Borough Council's Environmental Health Team (Noise) and Occupational Health and Food Safety Team. The representations concerned:

- the numbers of door staff;
- the number of persons allowed in the front smoking area;
- the condition of last entry;
- the potential effect of noise nuisance on neighbours from the proposed extension in opening hours and the removal of conditions;
- public safety concerns in relation to the smoking areas, late night refreshments and the removal of conditions.

The Sub-Committee noted that the concerns in relation to late night refreshment no longer applied as this element had been withdrawn by the applicant. Further clarification was required about the representations in respect of the smoking area as there was currently no restriction in place on the use of those areas.

Mr Outram the applicant, made the following submissions in support of his application:

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- Thirty3Hz had been in operation for a couple of years. The application to vary the premises licence, particularly the variation in opening hours was required to enable the club to compete with other venues close-by. Typically, customers would leave Thirty3Hz early so as to ensure last entry to music clubs by 1:30am.
- The extension to the hours of the patio area had been requested as customers preferred that area as opposed to a dark room.

Mrs Neville who assisted Mr Outram with the administration of Thirty3Hz, made the following submissions in support of the application:

- Thirty3Hz were keen to support their local community. For example, ACM students used the venue on Thursdays for a DJ night, as an extension to their lesson. ACM also used the venue on Tuesday nights to play, sing or showcase to their parents.
- The number of customers in Thirty3Hz during the week was generally quite low, averaging 26-28 people and therefore it was not cost effective to have more than 1 door staff member and they did not agree that more than 1 SIA accredited door staff member was required. Events would be risk assessed, and the number of door staff increased accordingly. Door staff were increased to three at the weekends.
- Referred to an incident where on a Wednesday night two groups of squaddies left Thirty3Hz and both groups went for the same cab resulting in an argument and fight outside of the premises. Since the incident, armed forces personnel had not been permitted into the club and this was reflective of the fact that the management of the premises took the club's reputation seriously.
- The licence currently only required one member of door staff on Friday and Saturday nights and any other nights where live music was taking place. Despite this, the premises had chosen to have door staff on other nights and had increased the numbers of door staff where appropriate.

The Police Inspector, Graham Barnett made the following submissions in support of Surrey Police's concerns about the following aspects of the variation application:

- He was concerned in relation to the condition proposed that no more than 25 patrons be allowed in the front of the premises to smoke at any one time. Surrey Police recommended the following alternative condition: 'No more than 15 patrons to be allowed in the front smoking area at any one time this area to be monitored by SIA registered door staff.' This area was very small and not big enough for 25 people.
- He was concerned in relation to the proposed condition that stated there was to be no entry after 1:30am. Surrey Police recommended the following alternative condition: 'No entry or re-entry after 01:30am except for those using the smoking area'.
- He was concerned in relation to Thirty3Hz only having one SIA registered door staff member from Sunday to Thursday. Cost savings should not be a barrier to safety, particularly for the safety of lone working door staff. Companies were reluctant to provide lone door staff because of safety issues. Surrey Police recommended the following alternative condition: 'When the premises is open for licensable activities Monday to Sunday there will be a minimum of one SIA registered member of door staff from 21:00 to 22:00 and a minimum of two SIA door staff from 22:00 to closing.' Thirty3Hz was located around the corner from the main thoroughfare of clubs and would therefore take longer for the police to attend incidents should they arise. Lone door staff could not check the toilets for drugs or

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the rear areas. It was also not achievable to expect the same door staff to check live CCTV images of other rooms in the club via I-Pads.

- Surrey Police recommended that the term 'decreased' was removed from the proposed condition 2 for door staff.

Mr Outram, made the following additional submissions in relation to the number of doorstaff recommended by Surrey Police:

- He confirmed that two SIA door staff were actually in place, mid-week, when the fight broke out between the two groups of army men;
- He stated that the bars Kokomo and Ali Bar only operated with one SIA doorman in the week and they were generally busier than Thirty3Hz;
- He would prefer that the requirement for a second SIA door staff member was risk assessed and/or employed at a later time in the evening.
- Management and staff regularly patrolled the premises during opening hours to check for drugs paraphernalia and to ensure customer safety.
- Customers generally did not arrive at Thirty3Hz until midnight.
- The kebab house next door had two SIA doormen and were therefore close by should additional help be required.
- He acknowledged that the smoking area outside the front of the premises was small but had nevertheless operated up until now with a maximum of 25 persons permitted in that zone at any one time. This condition had been offered by the applicant specifying the maximum number of persons as 25 - there was currently no limitation on the licence. If numbers were limited further than this, queues of people formed blocking the main exit.
- He confirmed that additional door staff could be provided within the hour, although they would normally have been requested in advance.

The Police Inspector, Graham Barnett made the following additional submissions in relation to the number of door staff:

- Additional SIA door staff should be arranged ahead of time, not if and when a public disturbance occurs. The one-hour window was not sufficient.
- He agreed that in the first hour of opening Surrey Police would be happy with one SIA door staff member ie from 10pm – 11pm, after which two SIA doorstaff should be in attendance until closing.
- All bars in Guildford, including, Kokomo Bar and Ali Bar, referred to by the applicant, should have two SIA doorstaff in attendance in the week.
- In relation to the fight, which broke out between the two squaddies, it still took place outside Thirty3Hz between customers of the premises and therefore was attributable to the premises.

The Team Leader for Food and Safety, Chris Woodhatch made the following submissions in support of Guildford Borough Council's Food and Safety objections:

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- He was in support of Surrey Police's recommendation to have more than one SIA door staff member in order to maintain public safety;
- Reference was made in the application of polycarbonate drinks containers being used but it was not clear whether it was mandatory to use these in the outside drinking area. Food and Safety would like this to be a mandatory condition. The Senior Litigation Solicitor advised that this was not a review of the licence. The condition suggested by the Food and Safety team had not been applied for by the applicant and was not related to the application to vary the licence given that the outdoor area was already in existence. The applicant confirmed that polycarbonate drinks containers were used in the outdoor smoking area and glasses were not permitted. In the early evening, the applicant would use cocktail glasses for couples and then cleared them away as the evening progressed.
- The Team Leader for Food and Safety also requested that the current conditions (H) regarding monitoring access via the rear gate, the position of staging and electrical safety should remain as conditions unless the applicant was able to demonstrate how the public safety issues could be alternatively addressed. The applicant advised that there would not be any staging.
- The Food and Safety Team would like to be informed of any changes to the internal layout. They were advised that changes could not be made to the layout without a separate variation application.

The Licensing Officer confirmed that conditions G1, 2, and 3 had mistakenly been included in the application to vary, however, these conditions were to be retained.

The Environmental Control Officer, Anjana Papnai made the following submissions in support of Guildford Borough Council's Environmental Control objections:

- Her only remaining concern was in relation to the usage of the outdoor patio area until 01:30 when it was currently restricted to 11pm. The increased length of time for use could cause a potential public nuisance in terms of noise for local residents living in the flats closest to the elevated level of the patio. 12:30 pm was suggested for closure.

The applicant confirmed that since April 2014 no noise complaints had been received. The tenants above the premises were noisy and the applicant had therefore blocked off the area with acoustic foam.

Having considered the application and the submissions from the applicant as well as those made by the Responsible Authorities, the Sub-Committee;

RESOLVED: That the application to vary premises licence GUPLA0184 for Thirty3Hz, 16 Park Street, City Centre, Guildford, GU1 4XB be granted in the following terms:

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The variation to hours and the addition of the licensable activities for the provision of performances of dance and provision of anything of a similar description to live music, recorded music or performances of dance be granted as set out below:

Permitted Hours:

Activities	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Times premises are open to public							
	10:00 – 03:30	10:00 – 03:30	10:00 – 03:30	10:00 – 03:30	10:00 – 03:30	10:00 – 03:30	12:00 – 03:30
Sale of alcohol							
For consumption on and off the premises	10:00 – 03:00	10:00 – 03:00	10:00 – 03:00	10:00 – 03:00	10:00 – 03:00	10:00 – 03:00	12:00 – 03:00
Provision of live music							
	10:00 – 03:00	10:00 – 03:00	10:00 – 03:00	10:00 – 03:00	10:00 – 03:00	10:00 – 03:00	12:00 – 03:00
Provision of recorded music							
	10:00 – 03:00	10:00 – 03:00	10:00 – 03:00	10:00 – 03:00	10:00 – 03:00	10:00 – 03:00	12:00 – 03:00
Provision of dance							
	10:00 – 03:00	10:00 – 03:00	10:00 – 03:00	10:00 – 03:00	10:00 – 03:00	10:00 – 03:00	12:00 – 03:00
Provision of similar activities							
	10:00 –	10:00 –	10:00 –	10:00 –	10:00 –	10:00 –	10:00 –

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Activities	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
	03:00	03:00	03:00	03:00	03:00	03:00	03:00

The application to vary the conditions of the licence be granted as follows:

All conditions in Sections E, F and H, which were now out of date, and not fit for purpose be removed and replaced with the conditions listed below:

CCTV Conditions

1. The licence holder will ensure that the premises benefit from a CCTV system that operates at all times when licensable activities are taking place.
2. The system will incorporate a camera covering the entrance door and will be capable of providing an image, which is regarded as identification standard. The precise position of the cameras may be agreed, subject to compliance with data protection legislation, with the Police from time to time.
3. The system will incorporate a recording facility and any recording will be retained and stored in a suitable and secure manner for a minimum of 30 days and will be made available, subject to compliance with data protection legislation, to authorised officers of a responsible authority for inspection on request.
4. The system must be able to export recorded images to a removable means e.g. CD/DVD and have its own software enable to allow playback/review.
5. A member of staff trained in the use of the CCTV system must be available at the premises at all times that the premises are open to the public.
6. The system will display, on any recording, the correct time and date of the recording.

Door Staff Conditions

1. On Friday and Saturday, the premises will operate with a minimum of one Security Industry Authority (SIA) door supervisor from 22:00 to 23:00 and two SIA door Supervisors from 23:00 until closing.
2. The requirement for numbers of door supervisors will be risk assessed by the venue at all times the premises is open for licensable activities and the SIA numbers will be further increased depending on the type of event. that is to be held.
3. Where the premises are to open Sunday to Thursday for licensable activities there shall be a minimum of one SIA doorman from 11pm until closing.

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Conditions of Last Entry

1. No entry or re-entry after 1:30am except for those using the smoking area.

Smoking Area at Front of Premises

1. No more than 25 patrons to be allowed in the front of the premises to smoke at any one time. A door supervisor when present will monitor the outside front smoking area.

Rear Smoking Area

1. This rear smoking area to be accessible to Patrons from opening until 1:30am. The smoking area shall be monitored by staff and management. Drinks will be allowed in this area.

Town Link Radio

1. The venue will operate a town link radio and all staff will be trained in its use.

REASON FOR DECISION:

Reason for Decision

In reaching their decision to grant the application subject to the above conditions, the Sub-Committee considered both written and oral representations from the applicant and the responsible authorities.

The Sub-Committee noted that no objections had been received to the addition of the licensable activities of provision of dance and provision of similar activities. These activities would therefore be granted. The applicant had withdrawn the application for late night refreshment, plays and films.

The Sub-Committee acknowledged the concerns raised by the Environmental Control Officer in relation to the potential for a noise nuisance caused by virtue of the increased hours of opening. The Sub-Committee noted however that there had been no noise complaints since May 2014, which coincided with the opening of the premises. The evidence showed that the premises had dealt with the cause of the complaints at that time and there had been no repetition for over 2 years. The Sub-Committee did not think there was sufficient evidence to refuse the increased hours. The applicant had also confirmed that they were not seeking the removal of Conditions G1, 2 and 3 and therefore the conditions on the licence should ensure that no noise disturbance was caused.

In respect of the application to vary the conditions:

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Door staff

The Sub-Committee noted that the condition for door staff, proposed by the applicant, went considerably beyond the requirements of the current licence, and therefore represented an improvement upon the current situation. Whilst Surrey Police had suggested that the proposed condition would decrease the numbers of door staff, this suggestion appeared to be based on a misunderstanding of the current licence conditions, which did not specify the numbers of door staff and did not require door staff on Sunday to Thursday unless live music was taking place. The premises had clearly been operating with more door staff than required by the licence, which indicated a responsible approach to risk assessing the numbers required. The Sub-Committee was therefore content that the number of SIA door supervisors would be increased when appropriate. The Sub-Committee varied the proposed condition to remove the reference to decreasing the numbers of door staff as they were satisfied that the minimum level of door staff proposed should not be decreased. This would mitigate against the concerns raised by Surrey Police about the insufficient number of doorstaff.

Last entry

The applicant accepted the amendment suggested by Surrey Police to include 'no entry or re-entry after 1:30am except for those using the smoking area'.

Smoking area at front of premises

Given that there was no restriction on the current licence to limit the number of patrons using the smoking area to the front of the premises, the Sub-Committee accepted the proposed condition by the applicant that required no more than 25 patrons to be allowed in the front of the premises to smoke at any one time. The Sub-Committee noted the representations from Surrey Police and Environmental Health, however the applicant was currently using the area with no restrictions and neither authority had provided any evidence of problems being caused.

Rear smoking area

Whilst Environmental Health requested that this area be closed at 12.30 am, the Sub-Committee were concerned that this would lead to more people using the smoking area at the front of the premises. There was no evidence of a noise nuisance being caused by patrons of this area and it would be monitored by staff and would be subject to the noise conditions on the licence. The Sub-Committee therefore agreed to the condition allowing this area to be used until 1.30 am.

Noise conditions

The applicant confirmed that Conditions G1-3 and 5 onwards would remain on the licence and the application was only to remove G4. The Sub-Committee noted that in their letter dated 20 June, the applicant indicated that they were happy to keep G4 on the licence, but were concerned

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about monitoring every 30 minutes. Environmental Health had confirmed that 30 minutes was a guide. The Sub-Committee felt that the condition played an important purpose in the event of noise breakout and should remain.

CCTV condition and town link radio condition.

No representations had been received and therefore these would be granted as applied for.

In respect of the public safety representations received from Environmental Health in respect of polycarbonate drinks containers, the Sub-Committee noted that this was not part of the variation application and was not currently required by the licence. As such, there was no justification for the Sub-Committee to impose this as a requirement. Environmental Health had also objected to the removal of the conditions in Section H but had not provided any explanation as to what public safety issues would be caused by the removal of the conditions. The Sub-Committee could therefore not justify refusing to remove these conditions.

The Sub-Committee agreed that the conditions proposed by the applicant represented a significant improvement upon the current licence and would ensure that the premises was run in accordance with the licensing objectives.

Signature of Chairman:

Dated: